

GROWTH MANAGEMENT HEARINGS BOARD  
EASTERN WASHINGTON REGION  
STATE OF WASHINGTON

BRODEUR/FUTURWISE, VINCE PANESKO  
AND WASHINGTON STATE DEPARTMENT OF  
COMMERCE,

Petitioner(s),

v.

BENTON COUNTY,

Respondent,

CITY OF WEST RICHLAND, THE ESTATE OF  
THAYNE WISER, CLAYNE WISER, KURT  
WISER, and TALON WISER,

Intervenor(s).

Case No. 09-1-0010c

**ORDER FINDING CONTINUING  
NON-COMPLIANCE**

(West Richland UGA)

**I. SYNOPSIS**

After a Compliance Hearing on August 3, 2010, the Board concluded Benton County's adoption of Resolution 10-301 enlarging the West Richland Urban Growth Area violates RCW 36.70A.110 and RCW 36.70A.115, is not supported by substantial evidence in the record, and is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.

**II. DISCUSSION**

On February 23, 2009, the Board of County Commissioners adopted Benton County Resolution 09-143 which amended the Comprehensive Plan Land Use Map to add 747 acres of land to the City of West Richland's Urban Growth Area.<sup>1</sup> According to the City of

<sup>1</sup> Futurewise Petition for Review (April 10, 2009), Tab 09-143.

1 West Richland, the UGA “expansion was designed to accommodate commercial and  
2 industrial development to support the wine industry and wine tourism, provide an  
3 aesthetically appealing gateway to the City, and promote the development of major retail  
4 stores so that the City may receive its fair share of sales taxes paid by its citizens” and “to  
5 increase employment opportunities in the City to achieve an appropriate jobs-housing  
6 balance and thereby reduce vehicle miles traveled.” The UGA expansion was also  
7 “designed to promote the economic development goal and was restricted to location-  
8 dependent commercial and industrial development” in support of the Red Mountain  
American Viticultural Area (AVA) and associated wine industry.<sup>2</sup>

9 In April 2009, Petitioners John Brodeur, Futurewise, and Vince Panesko filed timely  
10 Petitions for Review (PFR) challenging Resolution 09-143, and a Hearing on the Merits was  
11 held on November 5, 2009 in Kennewick. In the December 2, 2009 Final Decision and  
12 Order (FDO), the Board found that there was substantial evidence in the record to support  
13 the County’s determination that some revision to the pre-existing UGA boundaries was  
14 needed to accommodate projected urban growth, in furtherance of the economic  
15 development goal in RCW 36.70A.020(5). However, there was no substantial evidence in  
16 the record to support the 747-acre **size** of the UGA expansion area. The Board concluded  
17 that Petitioners had carried their burden of proof in demonstrating that Benton County’s  
action adopting Resolution 09-143 violated RCW 36.70A.110 and RCW 36.70A.115.<sup>3</sup>

18 As was noted in the FDO, the approximate size of a UGA is determined by a land capacity  
19 analysis which addresses how much land is available/allocated within the UGA to  
20 accommodate various uses with the goal of providing adequate land to accommodate  
21 projected urban growth for the succeeding 20 years.<sup>4</sup>

22 Again as referenced in the FDO, the initial West Richland Buildable Lands Summary  
23 contained no information regarding commercial and industrial land requirements to meet the  
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25 <sup>2</sup> City of West Richland’s Response Brief (October 22, 2009), pp. 10-11.

26 <sup>3</sup> FDO at 17.

<sup>4</sup> FDO at 15.

1 20 year growth demands.<sup>5</sup> On that basis, the Board could not " . . . determine from the  
2 record whether the County's designation of 747 acres exceeds the amount of land  
3 necessary to accommodate the projected urban growth."<sup>6</sup>

4 The Board indicated in the FDO that, on remand, the City and County should address the  
5 following three issues pertaining to the UGA expansion for non-residential, economic  
6 development purposes:

- 7 1. Develop the analysis showing the needed size (acreage) for this UGA  
8 expansion based upon projected 20-year urban growth (consistent with OFM  
9 population forecast), so as to satisfy the UGA sizing requirements in RCW  
10 36.70A.110(2) and RCW 36.70A.115, plus any offsetting UGA contractions in other  
11 areas;  
12 2. Identify the land market supply factor, if any, used to calculate total acreage  
13 needed; and  
14 3. Indicate the land use controls used to restrict residential uses within the UGA  
15 expansion area and also within the rural areas near the proposed freeway  
16 interchange to prevent induced urban growth once the freeway interchange is  
17 opened.<sup>7</sup>

18 On May 24, 2010, Benton County adopted Resolution 10-301 in an attempt to achieve  
19 compliance with the GMA. At the City's request, Benton County rescinded Resolution 09-  
20 143 and amended the Comprehensive Plan to reduce the previous UGA expansion area  
21 from 747 acres down to 545 acres. In this compliance proceeding, Petitioners allege: (1) the  
22 City of West Richland already had surplus commercial and industrial land available, (2)  
23 there is no basis in the evidentiary record to support the UGA expansion adopted in  
24 Resolution 10-301, and (3) the most recent UGA expansion violates RCW 36.70A.110 and  
25 RCW 36.70A.115, leading to inappropriate urban sprawl.

26 Benton County states: (1) the City of West Richland has provided additional supporting  
documentation and reduced the size of the UGA expansion request by 200 acres to 545  
acres, and (2) the UGA expansion proposal has location-dependent economic development

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<sup>5</sup> FDO at 15, 16.

<sup>6</sup> FDO at 16.

<sup>7</sup> FDO at 16.

1 opportunities that are site-specific to interchange development and will enhance and  
2 diversify employment opportunities within Benton County. The City argues: (1) the Board  
3 previously determined that some UGA expansion for location-dependent economic  
4 development purposes was supported by substantial evidence and was compliant, (2)  
5 based on the presumption of validity, the County and City have broad discretion to make  
6 policy choices, grounded in unique local circumstances about how to accommodate urban  
7 growth, and (3) Resolution 10-301 reducing the size of the UGA was supported by  
8 substantial evidence and was compliant.

9 The issue on compliance is appropriately framed as follows: Whether Benton County's  
10 action in rescinding Resolution 09-43 and adopting Resolution 10-301, which expanded the  
11 West Richland UGA by approximately 545 acres, complies with RCW 36.70A.110(2) and  
12 RCW 36.70A.115. RCW 36.70A.110(2) and RCW 36.70A.115, respectively, provide in  
13 relevant part as follows:

14 Based upon the growth management population projection made for the county  
15 by the office of financial management, the county and each city within the county  
16 shall include areas and densities sufficient to permit the urban growth that is  
17 projected to occur in the county or city for the succeeding twenty-year period . . .  
18 As part of this planning process, each city within the county must include areas  
19 sufficient to accommodate the broad range of needs and uses that will  
20 accompany the projected urban growth including, as appropriate, medical,  
21 governmental, institutional, commercial, service, retail, and other nonresidential  
22 uses.

23 Counties and cities . . . shall ensure that, taken collectively, adoption of and  
24 amendments to their comprehensive plans and/or development regulations  
25 provide sufficient capacity of land suitable for development within their  
26 jurisdictions to accommodate their allocated housing and employment growth,  
including the accommodation of, as appropriate, the medical, governmental,  
educational, institutional, commercial, and industrial facilities related to such  
growth, as adopted in the applicable countywide planning policies and consistent  
with the twenty-year population forecast from the office of financial management.

These two statutes were amended in 2009 to clarify that GMA planning should be expanded  
beyond land capacity for housing and employment growth to include land capacity for

1 certain additional specified categories of facilities such as commercial and industrial  
2 facilities; however, the 2009 legislative amendments did not change the GMA's requirement  
3 that the size of a UGA must be based upon an OFM 20-year population projection.<sup>8</sup>

4 An important goal of the GMA is to "[r]educe the inappropriate conversion of undeveloped  
5 land into sprawling, low density development." RCW 36.70A.020(2). Urban Growth Area  
6 (UGA) boundaries serve to contain "urban growth" within the designated UGA, thereby  
7 furthering the fundamental GMA policy to discourage sprawl.<sup>9</sup> "Oversized UGAs are  
8 perhaps the most egregious affront to the fundamental GMA policy against urban sprawl,  
9 and it is this policy that the UGA requirements, more than any other substantive GMA  
10 mandate, are intended to further."<sup>10</sup>

11 The Washington Supreme Court has provided explicit guidance regarding appropriate UGA  
12 sizing:

13 The size of a UGA must be "[b]ased upon" an OFM projection and a county must  
14 include "areas and densities sufficient to permit the urban growth" projected to  
15 occur over the next 20 years. . . . If the size of a UGA is not limited, rural sprawl  
16 could abound. Thus, although the GMA does not explicitly limit the size of a  
17 UGA, to give meaning to the market supply factor provision and in light of the  
18 GMA goal of reducing sprawl, we hold a county's UGA designation cannot  
19 exceed the amount of land necessary to accommodate the urban growth  
20 projected by OFM, plus a reasonable market factor.<sup>11</sup>

21 The Record before the Board on compliance includes a document submitted by the City to  
22 the County entitled Urban Growth Area (UGA) Information Spreadsheet, which includes a  
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24 <sup>8</sup> Laws of 2009, Chapter 121, § 3 (Final Bill Report SHB 1825).

25 <sup>9</sup> RCW 36.70A.020(2); *Thurston County et al. v. W. Wash. Growth Mgmt. Hearings Bd. et al.*, 164 Wn.2d 329,  
26 351 (2008).

<sup>10</sup> Brent D. Lloyd, *Accommodating Growth or Enabling Sprawl? The Role of Population Growth Projections in  
Comprehensive Planning under the Washington State Growth Management Act*, 36 Gonz. L. Rev. 73, 105  
(2001), quoted with approval by Supreme Court in *Thurston County et al. v. W. Wash. Growth Mgmt. Hearings  
Bd. et al.*, 164 Wn.2d 329, 352 (2008).

<sup>11</sup> *Thurston County et al. v. Western Washington Growth Management Hearings Board et al.*, 164 Wn.2d 329,  
351-352 (2008) [footnotes omitted]. Benton County's Planning Department indicated that according to the  
City's UGA Information Spreadsheet, the City did not use a market supply factor in its amended UGA  
proposal. Benton County Planning Department Memorandum (March 30, 2010) at page 5 – IR 64, Tab 64  
attachment to Futurewise's Objection to a Finding of Compliance.

1 "Table 3" setting forth the acreage required by West Richland to accommodate its 20-year  
2 growth projection, the existing/vacant acreage, and the existing shortfall/excess acreage  
3 required to meet that projection.<sup>12</sup> A summary of the relevant portion of the table shows the  
4 following:

Land Use Category	Acres Needed To Accommodate 20- yr. Projection	Existing Vacant/Undeveloped Acres	Acres In Excess Of Need
Commercial	496	998	+502
Industrial	496	1410	+914

5  
6  
7  
8  
9 The above table indicates West Richland has far more commercial and industrial land  
10 available than is needed to accommodate its adopted population target: 502 acres over and  
11 above the 496 required for commercial uses and 914 acres over and above the 496 acres  
12 required for industrial uses. The UGA Information Spreadsheet also states that the "TOTAL  
13 ACRES NEEDED TO ACCOMMODATE 20 YEAR POPULATION GROWTH" is 0.<sup>13</sup>

14 While the Board is mindful of the City's desire to pursue economic development  
15 opportunities in the vicinity of the Red Mountain AVA and the County's discretion to make  
16 local choices about accommodating urban growth, those considerations do not trump the  
17 specific requirements of the GMA for UGA sizing, including RCW 36.70A.110(2) and RCW  
18 36.70A.115. Furthermore, if the County approves a UGA enlargement based only upon  
19 economic development opportunities, without regard to the amount of land actually needed  
20 to accommodate OFM-projected urban growth, then such growth will be uncontained and  
21 the fundamental GMA goal to reduce sprawl will be frustrated.

22 In this case, an option thought to be available to the City was to consider "offsetting UGA  
23 contractions in other areas."<sup>14</sup> Neither the County nor the City addressed that possibility.

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25 <sup>12</sup> Petitioner Panesko's Objections to a Finding of Compliance (West Richland), attachment 4, page 3.

26 <sup>13</sup> Id.

<sup>14</sup> FDO at 16.

1 Review of the UGA Information Spreadsheet indicates all but 69 acres of the City's UGA are  
2 currently within the incorporated boundaries of the City, thus complicating that avenue.<sup>15</sup> In  
3 addition, it is a county's responsibility to establish UGAs and, in doing so, to ensure  
4 sufficient land capacity **countywide** to accommodate anticipated growth, consistent with the  
5 20-year OFM population forecast.<sup>16</sup> That capacity is then allocated to all of the county's  
6 UGAs. If it is the desire of Benton County to allow expansion of the West Richland UGA for  
7 commercial and industrial purposes, a reduction elsewhere to compensate for that  
8 expansion, based on the 20-year growth projection, may be needed. The conundrum in  
9 which West Richland finds itself is addressed by WAC 365-196-310(3)(e)(i)<sup>17</sup>:

10 A change to the urban growth area is an amendment to the comprehensive plan  
11 and requires, at a minimum, an amendment to the land use element. Counties  
12 and cities should also review and update the transportation, capital facilities,  
13 utilities, and housing elements to maintain consistency and show how any new  
14 areas added to the urban growth area will be provided with adequate public  
15 facilities. A modification of any portion of the urban growth area affects the  
16 overall urban growth area size and has county-wide implications. Because of the  
17 significant amount of resources needed to conduct a review of the urban growth  
18 area, and because some policy objectives require time to achieve, frequent,  
19 piecemeal expansion of the urban growth area should be avoided. Site-specific  
20 proposals to expand the urban growth area should be deferred until the next  
21 comprehensive review of the urban growth area.

22 As to the compliance legislation now before the Board (Resolution 10-301), Petitioners have  
23 the burden to show that the County's action is clearly erroneous and non-compliant with the  
24 GMA. Resolution 10-301 is presumed valid, and the County has discretion to make many  
25 choices about accommodating growth but in exercising that discretion, the County must  
26 follow the procedural and substantive requirements of the GMA.<sup>18</sup> The Supreme Court  
recently held that the **size** of a UGA must be "*based upon*" an **OFM 20-year urban growth  
projection** and a county's UGA designation **cannot exceed the amount of land**

<sup>15</sup> Petitioner Panesko's Objections to a Finding of Compliance (West Richland), attachment 4, page 1.

<sup>16</sup> RCW 36.70A.115

<sup>17</sup> Effective Feb. 19, 2010.

<sup>18</sup> RCW 36.70A.110(2), RCW 36.70A.320. *Thurston County, et al. v. Western Washington Growth Management Hearings Board, et al.*, 164 Wn.2d 329, 353 (2008). Local discretion is bounded by the goals and requirements of the GMA. *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561 (2000).

1 **necessary to accommodate the urban growth projected by OFM**, plus a reasonable  
2 land market supply factor.<sup>19</sup>

3 In reviewing the County's legislative action, the Board looks at both the operative language  
4 of the legislation and at any detailed findings of fact and conclusions of law.<sup>20</sup> Resolution 10-  
5 301 contains no specific findings of fact or conclusions of law as to whether the **size of this**  
6 **UGA expansion corresponds to the amount of land necessary to accommodate the**  
7 **urban growth** projected by OFM.<sup>21</sup>

8 The record contains no information about any findings or conclusions by the Benton County  
9 Planning Commission, although the record does indicate that the Planning Commission did  
10 not make a recommendation.<sup>22</sup>

11 The Benton County Planning Department Staff Report states that "West Richland's UGA  
12 Information Spreadsheet analysis for the amended UGA expansion shows that additional  
13 land is not needed to accommodate the OFM population projection for the City as required  
14 by RCW 36.70A.110(2)," and that "[n]o additional land is needed to accommodate the Office  
15 of Financial Management's population projections for West Richland."<sup>23</sup> The Staff Report  
16 also states that the "amended UGA is not being proposed by the City to accommodate the  
17 Office of Financial Management's population projections, but to accommodate urban growth  
18 necessary for the Red Mountain AVA-related economic development purposes at the  
19 proposed I-82 interchange site, and will restrict residential development."<sup>24</sup> However, the

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21 <sup>19</sup> RCW 36.70A.110; RCW 36.70A.115. *Thurston County v. Western Washington Growth Management*  
22 *Hearings Board*, 164 Wn.2d 329, 350 (2008).

23 <sup>20</sup> Meaningful appellate review requires entry of adequate and detailed findings of fact and conclusions of law.  
24 *Citizens for Responsible and Organized Planning v. Chelan Co.*, 105 Wn. App. 753 (2001).

25 <sup>21</sup> See Benton County Resolution 10-301, adopted May 24, 2010 – Exhibit A to Respondent Benton County's  
26 Statement of Compliance Action Re Resolution 09-143 (West Richland).

<sup>22</sup> Benton County Resolution 10-301, adopted May 24, 2010, page 2 – Exhibit A to Respondent Benton  
County's Statement of Compliance Action Re Resolution 09-143 (West Richland).

<sup>23</sup> Benton County Planning Department Memorandum (March 30, 2010) at page 7 – IR 64, Tab 64 attachment  
to Futurewise's Objection to a Finding of Compliance.

<sup>24</sup> *Id.* at page 9.



1 Board notes that the GMA requires a correspondence between UGA size and OFM-  
2 projected urban growth.

3 RCW 36.70A.290(4) requires the Board to base its decision on the record developed by the  
4 County, as supplemented with additional evidence determined to be necessary or of  
5 substantial assistance to the Board. The City and County cite no evidence in the record to  
6 show a correspondence between the expanded size of the UGA and OFM-projected urban  
7 growth.<sup>25</sup> The City and County do not assert that the size of the UGA is “based upon the  
8 growth management population projection made for the county” by OFM, as required by  
9 RCW 36.70A.110(2). The City and County do not argue that this UGA expansion will  
10 accommodate allocated growth, consistent with the OFM 20-year population forecast, in  
11 accordance with RCW 36.70A.115.

12 Rather, the City states that “[t]he purpose of this UGA expansion is not to accommodate  
13 population growth, but to attract and accommodate economic development near the  
14 freeway interchange and renowned Red Mountain AVA . . .,” and “[t]his is **not** a UGA  
15 expansion to provide residential and other uses for the projected twenty-year population  
16 increase.”<sup>26</sup> However, the Board notes that the GMA does not authorize UGA sizing based  
17 on something other than OFM-projected urban growth, and the Supreme Court has held  
18 that a UGA designation cannot exceed the amount of land necessary to accommodate the  
19 urban growth projected by OFM.

20 Therefore, the Board finds and concludes as follows: There is no substantial evidence in the  
21 record to support the County’s **sizing** of this UGA expansion in Resolution 10-301. There is  
22 no substantial evidence in the record that the size of the UGA is based upon an OFM urban  
23 growth projection. Petitioners have carried their burden of proof by demonstrating that

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24 <sup>25</sup> Although the GMA does not place the burden on the County to justify in the Comprehensive Plan a UGA  
25 boundary decision adopted in a joint plan with a city, once a petitioner challenges the size of a county's UGA,  
26 the county should explain its UGA sizing decision and the difference between land supply and demand.  
*Thurston County, et al. v. Western Washington Growth Management Hearings Board, et al.*, 164 Wn.2d 329,  
352-353 (2008).

<sup>26</sup> City of West Richland’s Response to Petitioners’ Objections to a Finding of Compliance, page 5.

1 Benton County's expansion of the West Richland UGA in Resolution 10-301 violated RCW  
2 36.70A.110 and RCW 36.70A.115, is not supported by the evidentiary record, and is not  
3 guided by RCW 36.70A.020(2).

4 Benton County's adoption of Resolution 10-301 is clearly erroneous in view of the entire  
5 record before the Board and in light of the goals and requirements of the GMA. On remand,  
6 the County and City may consider explaining how the size of any UGA expansion  
7 corresponds to the amount of land necessary to accommodate the urban growth projected  
8 by OFM over the 20-year planning horizon, together with an explanation as to how the  
9 County's pre-existing UGA boundaries have been revised to provide offsetting contractions,  
if any, to any Urban Growth Area expansion for the City of West Richland.

### 10 III. ORDER

11 Benton County's adoption of Resolution 10-301 enlarging the West Richland Urban Growth  
12 Area violates RCW 36.70A.110 and RCW 36.70A.115, is not supported by substantial  
13 evidence in the record, and is clearly erroneous in view of the entire record before the Board  
14 and in light of the goals and requirements of the GMA. Resolution 10-301 does not comply  
15 with the GMA, and this case is remanded to Benton County to take further actions to comply  
16 with the Growth Management Act.

17 The following schedule shall apply:

18 Compliance Due on identified areas of noncompliance	February 21, 2011
19 Compliance Report and Index to Compliance	March 7, 2011
20 Any Objections to a Finding of Compliance and Record Additions/Supplements Due	March 21, 2011
21 County's Response Due	April 4, 2011
22 Compliance Hearing (telephonic) 23 <b>360 407-3780 pin 975022#</b>	April 12, 2011 10:00 a.m.

24 Entered this 24th day of September, 2010.

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Raymond L. Paoella, Board Member

Joyce Mulliken, Board Member

William Roehl, Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and three copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review. A response to a Motion for Reconsideration must be filed within 5 days of the filing of the motion.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person, by fax or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).